



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING
ENFORCEMENT DIVISION
*DIRECTIVE***

**DIRECTIVE
NUMBER
226**

**DISTRIBUTION
DATE
October 1, 1998**

1. SUBJECT: CLASS ACTION COMPLAINTS

2. PURPOSE: To set forth the procedures for processing class action complaints.

3. BACKGROUND: Government Code section 12961 provides that the Department of Fair Employment and Housing (DFEH) Director or a complainant may file a complaint on behalf of a group or class in appropriate instances. Once filed, however, it is within the discretion of the Director to decide whether the complaint will be pursued as a class action complaint. When such a determination is made, the Department has two years, rather than one, from the filing date in which to issue an accusation. Government Code, section 12965, subdivision (a), requires that the respondent be notified in writing within one year of the filing date when the Director determines a complaint will be treated as a group or class complaint.

4. PROCEDURES:

Requests or recommendations for class action complaints resulting from internal complaints will be evaluated by the District Administrator. Requests for class action complaints from external sources will be routed to and evaluated by the Special Investigation Unit (SIU) Administrator.

A. Intake Requests from Internal Sources:

1) Pre-Recommendation Considerations:

- a) When a complainant wishes to file a class action complaint the Consultant shall obtain the following information during the interview:
 - How or why respondent's practice has affected others (e.g., women not promoted, all older workers laid off, etc.); and
 - Names, addresses, telephone numbers, and protected group status of other persons affected by the practice(s).
- b) The complaint shall be drafted using the usual format, including allegations of harm and differential treatment of the complainant

and the group or class, with the addition of the following statement:

"I am making this complaint on behalf of myself and all others who have been, are now, or will in the future be similarly aggrieved." (Refer to Attachment 1 for sample Class Action complaint.)

- c) The complainant should be informed at the time of intake that even though class complaint language is included in the complaint, a determination as to whether it will be pursued as a class complaint will be made at a later date. (The "individual" aspects of the complaint will be pursued even if the class aspect is not.)
- d) The complaint will be filed, registered and served in accordance with standard procedures.
- e) A decision to investigate a charge as a class action complaint will not be made until the response is received and analyzed by the Consultant and the District Administrator, in conjunction with the assigned attorney. In making the recommendation to process the complaint as a class action complaint, the District Administrator will consider whether:
 - The practices/policies or observable results of the practices/policies can be articulated as being class based (e.g., discrimination against African-Americans in testing, height standard discrimination against Asians, women routinely denied promotion, etc.); or
 - It will be more efficient for the Department to investigate a case on a class basis rather than through separate filings for each individual complainant; or
 - The respondent is an industry leader or an important industry in the community, or the issue is important to the Department because it is unique, critical to development of law, or important to the community.
- f) Where it is determined that the complaint will not be investigated as a class action complaint, the complaint will be handled as an individual complaint. The complainant will be so advised in writing by the Consultant.

2) Recommending the Complaint:

- a) Where the District Administrator determines that the complaint will be recommended for a class action complaint, within three (3) months of the complaint's file date, he/she will prepare a memorandum so advising the appropriate Regional Administrator. Included in that memorandum will be a detailed explanation as to why the complaint should be handled as a class action complaint. The case file should accompany the memorandum.
- b) Where the Regional Administrator approves the recommendation, it will be submitted to the Deputy Director Enforcement Division. The Deputy Director, with the concurrence of the Chief Counsel, will make a recommendation to the Director as to whether the complaint shall be processed as a class action complaint.
- c) The Director will determine whether the complaint will be investigated as a class action complaint. Where a decision is made to process the complaint as a class action, the case file will be forwarded to the SIU Administrator. Where the decision is made to reject the recommendation, the case file will be returned to the District Office within two weeks of the date of the decision with a memorandum explaining the decision.
- d) The Director also has the discretion to determine whether a Director's Complaint will also be authorized and pursued in conjunction with the class action complaint. If such is determined, the Chief Counsel will ensure that the complaint is prepared and referred to the SIU Administrator for assignment and processing.
- e) The SIU Administrator will return the signed complaint and the case file to the District Administrator for registering and service. Upon completion of these activities, the District Administrator will return the file to SIU Administrator for investigation.

B. Amending an Individual Complaint:

When, in the processing of an individual complaint, the Consultant has reason to believe the complaint should be pursued as a class action, the complaint may be amended.

- 1) The case will be routed to the appropriate Regional Administrator in the same manner as described above if the District Administrator concurs that the criteria set forth in Section 4.A.2) above, are met.
- 2) In the event that such an amendment is authorized and the complainant does not want to sign the complaint, a Director's Complaint can be recommended if one has not already been issued.

C. Requests from External Sources:

1) Pre-Recommendation Considerations:

- a) The SIU Administrator, in conjunction with the Chief Counsel, will make a recommendation as to whether a class action complaint should be filed. In doing so, they will consider the same criteria set out in Section 4.A.1) above.
- b) Where it is determined by the SIU Administrator and Chief Counsel that the complaint will not be investigated as a class action complaint, the initiator will be so notified by SIU Administrator.

2) Recommending the Complaint:

Where the SIU Administrator and the Chief Counsel determine that a class action complaint should be filed, the reasons for their decision shall be stated along with their recommendation in a memorandum to the Director.

- The Director will determine whether a class action complaint will be filed.
- The Director also has the discretion to determine whether a Director's Complaint will be authorized and pursued in conjunction with the class action complaint. The Chief Counsel will ensure that the complaint is prepared and referred to the SIU Administrator for assignment and processing.
- The SIU Administrator will forward the signed complaint, proposed service letter and the case file to the appropriate District Office for registering and service. When these activities are completed, the file will be returned to the SIU Administrator.

D. Notification of Parties after Director's Review:

1) Recommendation not Approved:

In the event that the recommendation for a class action complaint is not approved:

- a) A memorandum will be issued to the District Administrator or SIU Administrator at the level at which it was rejected explaining the reason for disapproval; and

b) A letter signed by the District Administrator or SIU Administrator will be sent to the complainant explaining why a class action complaint will not be pursued.

2) Recommendation Approved:

Where the Director decides a case shall be investigated on a class basis, the Chief Counsel, or his/her designate, will be responsible for:

- a) Notifying the respondent in writing prior to one year from the filing date. Such notice will also be sent on any Director's Complaints issued in conjunction with the class complaint and include a description of the class involved. The respondent will be given an opportunity to provide a written response to the notification.
- b) Notifying the complainant(s) in writing that the class certification extends the investigation period for an additional calendar year. The notification shall include:
 - An explanation of their right to an independent counsel; and
 - If applicable, a caution that although the statute does not address the issue, it is the Department's position that the "right-to-sue" date has not been extended or changed in any way as a result of the extension of the investigative period.

E. **Responsibility for Processing:**

- 1) The assigned Consultant has the primary responsibility for processing the class action complaint under the supervision of his/her Administrator.
- 2) Where the Director has requested that an attorney be assigned to the case, he/she is to be consulted regarding the investigative strategy and the appropriateness of settlement terms.
- 3) Settlement terms will be approved by the Chief Counsel.
- 4) The case will be processed and closed in accordance with the procedures described in Directive 222, "Director's Complaints."

5. **APPROVAL:**

Nancy C. Gutierrez, Director

Date

SAMPLE CLASS ACTION COMPLAINT

- I. On 1/1/90, I was hired by (Respondent) as an Assistant Bank Manager. On several occasions I was denied promotion to Manager, the most recent incident occurring on March, 14, 1997.
- II. I was advised by the Personnel Officer that I needed more experience before I will be ready for a manager position.
- III. I believe I was denied promotion due to my sex, female. My belief is based upon the following:
 - A. I am as qualified as the male Managers who have been promoted in the past (names on file with DFEH).
 - B. My performance evaluations have all been outstanding and I have trained several males who have received promotions to manager.
 - C. I am unaware of any females promoted to the position of Manager with Respondent even though I personally am aware of several who qualify for such positions.
- IV. I am making this complaint on behalf of myself and all other females who have been, are now, or will in the future be similarly aggrieved.